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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. [redacted] 51

HYMAN WAINER, LOUIS WAINER, GEORGE DAVIS, ET AL.,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HARRY C. HEYL,
IRWIN S. RUBELLE,
Counsel for Petitioners.

INDEX.

Subject Index.

	Page
Petition for writ of certiorari	1
Short statement of the case	2
Statement of matters involved and the grounds relied upon for granting of writ of certiorari	4
Prayer for writ	6
Brief in support of petition	8
Opinions of courts below	8
Jurisdiction	8
Statement of case	8
Specifications of error	8
Argument	9
Conclusion	18
Appendix (statutes involved)	19

Table of Cases Cited.

Bailey v. United States, 5 F. (2d) 437	5, 13
Brown v. United States, 150 U. S. 93, 14 Sup. Ct. Rep. 37, 37 L. Ed. 1010	5, 12
Collenger v. United States, 50 F. (2d) 345	5, 10
Foreman v. United States, 28 F. (2d) 768	5, 13
Gerson v. United States, 25 F. (2d) 49	5, 13
Hauger v. United States, 173 Fed. 54	13
La Franca v. United States, 282 U. S. 568, 75 L. Ed. 551	4, 10
Lane v. United States, 34 F. (2d) 413	5, 12
Logan v. United States, 144 U. S. 263	12
Mickle v. United States, 33 F. (2d) 684	6, 16
Minner v. United States, 57 F. (2d) 506	5, 13
Morrow v. United States, 11 F. (2d) 256	5, 12, 13
Murphy v. United States, 38 F. (2d) 441	5, 13
Nielsen, ex parte, 131 U. S. 76, 33 L. Ed. 118	4, 10
United States v. One Marmon Automobile, 5 F. (2d) 113	6, 14
United States v. Satuloff Bros., 79 F. (2d) 846	15

Statutes Cited.

Judicial Code, Sec. 240(a) as amended by Act of February 13, 1925. Section 347, Title 28 U. S. C. A.	8
R. S. 3450	14
26 U. S. C. A. 193, R. S. 3244	5, 13
26 U. S. C. A. 404, R. S. 3296	6, 14
27 U. S. C. A. 3 (formerly Section 5 of Willis Campbell Act)	5, 10, 13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 1003

HYMAN WAINER, LOUIS WAINER, GEORGE DAVIS, DONALD BLINK AND ED. LUECK,

Petitioners,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Hyman Wainer, Louis Wainer, George Davis, Donald Blink and Ed. Lueck, respectfully pray that a writ of certiorari issue to review a decision of the Circuit Court of Appeals for the Seventh Circuit, affirming the conviction of your petitioners in the United States District Court for the Eastern District of Wisconsin.

I.

Short Statement of the Case.

These petitioners, together with others, were indicted in the District Court as aforesaid, on an indictment returned May 4, 1934, of four counts, of which count 1 (R. 2-6) charged the defendants with conspiracy (Appendix 1) to violate various sections of the Liquor Revenue Laws of the United States; count 2 (R. 6-7) charged the same defendants with carrying on the business of wholesale liquor dealers without having paid the special tax as required by law (Appendix 2); count 3 (R. 7-8) charged them with concealing and aiding in the concealment of distilled spirits, on which the tax had not been paid, which said spirits had been removed to a place other than a distillery warehouse provided by law (Appendix 3); and count 4 (R. 8-9) charged them with removing and being concerned in the removal of distilled spirits "to a place and from a place to the grand jurors unknown," on which distilled spirits the requisite taxes had not been paid.

The petitioners, Hyman Wainer and George Davis, together with the defendant Ted Wallmer, filed their special plea in bar (R. 11-12), showing they had previously been convicted under an indictment charging a conspiracy to violate the National Prohibition Law, which indictment—set out in full as their Exhibit "A" (R. 13-19)—charged an offense arising out of the same acts committed at the same times and in the same places as charged in the instant prosecution. This plea was overruled (R. 10), and the petitioners, together with the other defendants, then stood trial.

At the trial the Government introduced the statement of a co-conspirator, Al Tessen (Exhibit 5, R. 27-30 and 89-92), made after the termination of the conspiracy and

by way of narration of past events, implicating the petitioners who—by counsel—objected (R. 93) to admissibility of the statement as against them, and moved to strike therefrom all such portions as referred to them. The objection and motion were overruled, the trial court saying (R. 93) that the statement would go in with an appropriate instruction; no such instruction was given.

The Government introduced evidence of civil litigation between some of the petitioners and strangers to the instant suit (R. 38-41, 42-45, Government Exhibit 3, R. 127-134, and Government Exhibit 4, R. 135-140), whereby it sought to connect the petitioners with premises where equipment for manufacture of illicit liquor had been seized; petitioners' objections to the admissibility of this evidence was overruled (R. 44, 45). Thereafter, throughout the course of the trial no proof was introduced by the Government that the petitioners or any one of them had carried on the business of wholesale liquor dealer; there was no proof introduced by the Government that any of the petitioners had committed or procured, or aided in, the commission of any of the acts alleged within more than three years prior to the return of the indictment; there was no evidence whatever offered by the Government to make proof or raise the presumption that any of the distilled spirits seen or seized in connection with the entire case was not tax paid.

On behalf of the defendants, the evidence (R. 94-116) indicated non-participation in the conspiracy and good character and reputation on the part of the petitioner Louis Wainer; and of abandonment of the conspiracy and subsequent non-participation in any of the acts thereafter by the petitioner Hyman Wainer for more than three years prior to the return of the indictment. At the close of all the evidence, petitioners asked for an instruction, among others (Exhibit A, I, R. 25) on the effect of abandonment of con-

spiracy and subsequent non-participation for more than three years prior to the return of the indictment, which instruction was refused by the court. And thereafter, upon the finding of guilty, the court sentenced the petitioners, Hyman Wainer and Louis Wainer, to imprisonment in the United States penitentiary for a term of two years and a fine of $10,000 each on the first count, to a term of two years and a fine of $1,000 each on each of the second and third counts, and a fine of $100 each on the fourth count, the sentences to serve consecutively, making a total term of imprisonment of six years and a total fine of $12,100 each for the two above-named petitioners (R. 32). The petitioner Ed. Lueck was sentenced to imprisonment in the house of correction for a term of six months and to pay a fine of $100, and the petitioners George Davis and Donald Blink were sentenced each to a term of imprisonment in the house of correction for three months and to pay a fine of $100.

II.

Statement of Matters Involved and the Grounds Relied Upon for Granting of Writ of Certiorari.

The discretionary power of this Court to grant a writ of certiorari is invoked on the following grounds:

First. The decision of the court below that a conviction for conspiracy to violate the National Prohibition Laws is not, under Section 3, Title 27, U. S. C. A. (Appendix 4), a bar to prosecution for conspiracy to violate the Internal Revenue laws for the same acts, is in conflict with the decisions of this Court in *La Franca* v. *U. S.*, 282 U. S. 568, 75 L. Ed. 551, and *Ex-parte Nielsen,* 131 U. S. 76, 33 L. Ed. 118.

Second. The holding of the court below that the statement of the co-conspirator, made after the termination of

the conspiracy and by way of narration of past events, is admissible as to the other defendants, over their objection, in disregard of their motion to strike from the statement such portions as refer to them, and without any instruction to limit the effect of such statement strictly to the defendant making it, is in conflict with the opinion of the same court in *Collenger* v. *United States,* 50 F. (2d) 345, 348, and with the Circuit Court of Appeals for the 10th Circuit in *Minner* v. *United States,* 57 F. (2d) 506, 511, the Circuit Court of Appeals for the 8th Circuit in *Lane* v. *United States,* 34 F. (2d) 413, 416; *Morrow* v. *United States,* 11 F. (2d) 256, 259, and *Gerson* v. *United States,* 25 F. (2d) 49, 55, 56, as well as the holding of this Court in *Brown* v. *United States,* 150 U. S. 93, 14 S. Ct. 37, 37 L. Ed. 1010.

Third. There is a conflict of opinion in the various Circuit Courts of the United States as to whether or not Section 193, Title 26, U. S. C. A., R. S. 3244, imposing a special tax for carrying on the business of wholesale liquor dealer (charged to have been violated by count 2) has been reenacted by Section 3, Title 27, U. S. C. A. (formerly called Section 5 of Willis-Campbell Act). In *Bailey* v. *United States,* 5 F. (2d) 437, the Circuit Court of Appeals for the Fifth Circuit held that Section 193 had been repealed and not reenacted. In *Foreman* v. *United States,* 28 F. (2d) 768, the Circuit Court of Appeals for the Eighth Circuit held that this section had been repealed, but was revived by the Willis-Campbell Act. In *Murphy* v. *United States,* 38 F. (2d) 441, the Circuit Court of Appeals for the Seventh Circuit, to which this writ is sought, held "what sections of the old Internal Revenue Law were or were not reenacted by that act (U. S. C. A., Title 27, Section 3) were not considered (referring to *U. S.* v. *Stafoff,* 260 U. S. 480, 43 S. Ct. 199, 67 L. Ed. 358) so that we have the question

as to the scope of the Willis-Campbell Act wholly unconsidered in either the *Stafoff* or *Remus* case."

Fourth. By sustaining the conviction of the petitioners on count 3, charging violation of Section 404, Title 26, U. S. C. A., this Court came into express conflict with the holding in *United States* v. *One Marmon Automobile,* 5 F. (2d) 113, wherein it was held that R. S. 3296, Section 404, Title 26, U. S. C. A., applies to licensed distillers and other established warehouses, wherefore—in order to establish uniformity of opinion throughout the United States—it is urged that this Honorable Court construe the aforesaid statute.

Fifth. By sustaining conviction on all counts, the court below held that in a prosecution of this type there is no duty on the Government to prove that any of the distilled spirits in question were not tax paid, nor that there is any duty even to raise such presumption, as by showing that containers of over five gallons lack stamps or other marks indicating tax payment; this is in conflict with the holding of the Circuit Court of Appeals for the Eighth Circuit in *Mickle* v. *United States,* 33 F. (2d) 684, 685.

WHEREFORE your petitioners pray that a writ of certiorari issue under the seal of this Court, directed to the Circuit Court of Appeals for the Seventh Circuit, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court had in the case numbered and entitled on its docket No. 5708, Hyman Wainer, Louis Wainer, George Davis, Donald Blink and Ed. Lueck, petitioners, *vs.* The United States of America, respondent, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United

States; and that the judgment herein of said Circuit Court be reversed by the Court, and for such further relief as to this Court may seem proper.

HYMAN WAINER,
LOUIS WAINER,
GEORGE DAVIS,
DONALD BLINK,
ED. LUECK,
By HARRY C. HEYL,
IRWIN S. RUBELLE,
Their Attorneys.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of Courts Below.

The opinion of the Circuit Court of Appeals for the Seventh Circuit (not yet reported) appears in full in the record (R. 153). No formal opinion was rendered by the District Court.

II.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by Act of February 13, 1925, Section 347, Title 28, U. S. C. A.

III.

Statement of Case.

A full statement of the case having been made in the petition for the writ of certiorari, it is omitted here for the sake of brevity.

IV.

Specifications of Error.

I. The Circuit Court of Appeals erred in sustaining the overruling of the special plea of the petitioners Hyman Wainer, George Davis and the defendant Ted Wallmer.

II. The Circuit Court of Appeals erred in sustaining the admission of the statement of a co-conspirator, made after the termination of the conspiracy, and by way of narration of past events, as against the other defendants.

III. The Circuit Court of Appeals erred in sustaining conviction on count 2, for that Section 193 of Title 26, U. S. C. A., charged by count 2 to have been violated, had been repealed by the National Prohibition Act and has not been reenacted.

IV. The Circuit Court of Appeals erred in sustaining conviction on count 3, for that Section 404 of Title 26, U. S. C. A., charged by count 3 to have been violated, applies solely to licensed distillers and bonded warehousemen, there being no charge in the indictment or evidence in the record putting any of the petitioners in that classification.

V. The Circuit Court of Appeals erred in sustaining the admission of evidence and records of civil litigation between some of the petitioners and strangers to this suit.

VI. The Circuit Court of Appeals erred in sustaining the conviction on every count in the indictment, for that there was no evidence whatever that any of the distilled spirits seen or seized in this case was illicit, or not tax-paid, or lacked stamps or other marks evidencing tax payment.

VII. The Circuit Court of Appeals erred in sustaining the refusal to instruct the jury as to the effect of the evidence indicating abandonment of the conspiracy for more than three years prior to the return of the indictment.

V.

Argument.

(I) The special plea of the petitioners Hyman Wainer, George Davis and the defendant Ted Wallmer should have been allowed. The special plea of these defendants set up their conviction under the National Prohibition Act on an indictment which was set out in full, and the reading of

which indictment showed that the offenses in that and in the present indictment were identical in time, place and transaction. Under the authority of Section 3 of Title 27, formerly known as Section 5 of the Willis-Campbell Act, these petitioners were immune to further prosecution. In a very similar situation, this Court, in the case of *La Franca* v. *U. S.*, 75 L. Ed. 551, 282 U. S. 568, said:

> "Respondent already had been convicted and punished in a criminal prosecution for the identical transactions set forth as a basis for recovery in the present action. *He could not again, of course have been prosecuted criminally for the same acts.* * * * (Italics are ours.)
>
> "To hold that the acts of respondent in question were not violations of these preceding laws as amended, as well as of the National Prohibition Act, would be to give a narrow and strained application to this provision of the Willis-Campbell Act, and to raise the very doubts in respect of its constitutionality which we are bound to avoid if reasonably it can be done."

And in *Ex parte Nielsen*, 131 U. S. 176, 33 L. Ed. 118, this Court on a somewhat similar question said, on page 122:

> "The test is not, whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense."

In view of the foregoing authorities, the position of the trial court that the Willis-Campbell Act applies to convictions for violations of the prohibition laws, or the revenue laws, but not to *conspiracies* to violate either of them, seems a straining of technicalities to the breaking point.

(II) The statement of Al Tessen, a co-conspirator, made after the termination of the conspiracy, and by way of narration of past events, without limiting the effect of the

statement strictly to the defendants making it, is inadmissible as to the other defendants.

The Circuit Court of Appeals for the Seventh Circuit, by sustaining the admission of such statement reversed its own former ruling by it made in *Collenger* v. *United States*, 50 F. (2d) 345.

> "When, therefore, the statement had been received in evidence, the Court's attention was then called to it by the motion to limit, it was the duty of the Court then and there unequivocally to limit its application strictly to the defendant who made the statement. Where there are many defendants on trial charged with a general conspiracy, each is subjected to the hazard of being injuriously affected by alleged acts or statements of some other defendants, incompetent as to all but the ones making the statements. In such situations courts should be ever alert to minimize, so far as possible, the hazard to defendants whom the law does not bind by such statements.
>
> "When this statement appeared in evidence—inadmissible as to all defendants except Orta, and so pregnant with harm to others on trial—on the motion then made to exclude it as to the others, the duty so to limit its application was immediate and unmistakable."

and further in the same case, relative to the duty of the Court to limit the effect of the statement without any further motions on the part of the defendant that Court goes on to say:

> "The government contends that, if there was right at that time to have the jury instructed as requested, the right was waived through the colloquy.
>
> "The right to have such incompetent and harmful evidence promptly excluded, as against those to whom it has no proper application, is plain; but, if it be assumed that the right in this instance was waived by the failure of counsel to call attention to it upon the general charge to the jury, the waiver is not applicable

> to the Orta statement, nor to other similar items of evidence admitted over objection, or retained through denial of motions to exclude made immediately after they were received."

By reversing itself on the *Collenger* case, the Circuit Court of Appeals brought its decision into conflict with the various other circuits and with the holding of this Court in *Brown* v. *United States,* 150 U. S. 93, 14 S. Ct. 37, 37 L. Ed. 1010, where this Court citing its own decision in *Logan* v. *U. S.,* 144 U. S. 263, said:

> "But only those acts and declarations are admissible under this rule, which are done and made while the conspiracy is pending, and in furtherance of its object. After the conspiracy has come to an end, whether by success or by failure, the admissions of one conspirator by way of narrative of past facts, are not admissible into evidence against the others."

In the Eighth Circuit, the Circuit Court of Appeals in *Lane* v. *U. S.,* 34 F. (2d) 413, at pages 415, 416, says:

> "The admission of this testimony seems to be violative of the most elementary rules of evidence. The testimony elicited was palpably hearsay, unless it was admissible on the theory that it constituted the declaration of a co-conspirator. It was not made in the presence of the defendants on trial; it constitutes no part of the *res gestae,* and, if it be conceded that a conspiracy between Cushman and the defendants had been established, certainly there was nothing to show that these statements by Cushman were made during the existence of any such conspiracy. They apparently constituted a narrative of past events by which the declarant sought to exculpate himself and inculpate his co-defendants, and they were not made in furtherance of the conspiracy or common design."

The Circuit Court of Appeals for the Eighth Circuit consistently held to the same rule of law in *Morrow* v. *United*

States, 11 F. (2d) 256, and *Gerson* v. *United States*, 25 F. (2d) 49. That is also the position taken by the Circuit Court of Appeals for the Tenth Circuit in *Minner* v. *U. S.*, 57 F. (2d) 506, and by the Circuit Court of Appeals for the Fourth Circuit in *Hauger* v. *United States*, 173 Fed. 54. This presents a clear conflict of decisions between the various circuits, as well as a departure from the law as laid down by this Court.

(III) There is a conflict of opinion in the various Circuit Courts of the United States as to whether Section 193, Title 26, U. S. C. A. (R. S. 3244), has been reenacted by Section 3, Title 27, U. S. C. A. The first mentioned statute is charged to have been violated in count 2 of the indictment herein. The Circuit Court of Appeals for the Fifth Circuit, in *Bailey* v. *U. S.*, 5 F. (2d) 437, held that this statute, providing for a special tax for wholesale liquor dealers, was repealed by the National Prohibition Act and not reenacted by Section 3, Title 27, U. S. C. A. (formerly known as Section 5 of the Willis-Campbell Act). The Circuit Court of Appeals for the Eighth Circuit in *Foreman* v. *U. S.*, 30 F. (2d) 768, held that this statute had been repealed by the National Prohibition Act but was revived by the Willis-Campbell Act. The Circuit Court of Appeals for the Seventh Circuit, to which this Writ of Certiorari is sought, in *Murphy* v. *United States*, 38 F. (2d) 441, held:

> "What sections of the old Internal Revenue Law were or were not reenacted by that Act (U. S. C. A., Title 27, Section 3) is not considered (referring to *U. S.* v. *Stafoff*, 260 U. S. 480) so that we have the question as to the scope of the Willis-Campbell Act wholly unconsidered in either the Stafoff or the Remus case."

Your petitioners respectfully urge that the position taken by the Circuit Court of Appeals for the Fifth Circuit, in

Bailey v. *U. S. (supra)*, is the more consistent with logic and sound judicial precedent, and should be so declared by this Honorable Court.

(IV) Section 404, Title 26, U. S. C. A. (R. S. 3296), on which conviction was sustained on count 3, is applicable only to licensed distilleries and their established warehouses, and is without effect as to the present petitioners, who are neither alleged nor proven to belong in that category.

The United States District Court for the Northern District of Georgia, in *U. S.* v. *One Marmon Automobile*, 5 F. (2d) 113, said on page 115:

> "Cognate provisions as to distilled liquors are found in R. S. 3296 (Comp. St. 6038), prohibiting the removal of them before the tax is paid to a place other than the distillery warehouse, or the concealment of them when so removed or the removal of them from a warehouse in an unlawful manner, or concealment of them when so removed. There is no specific intent required in this statute, but felony punishments are imposed for the acts denounced. No forfeiture of vehicle is provided. R. S. 3296, seems appropriate to and should be confined to licensed distilleries and their established warehouses. R. S. 3450, with its broader provisions and lighter penalties, may well cover illicit stills and their products, and it has so been always held in this District."

This statute was clearly intended as a special restriction against a specially licensed set of tax payers, and was never intended to have any application to "bootleggers," for whom—as the above court points out, R. S. 3450 was particularly intended.

We respectfully submit that this Honorable Court should construe the statute in question and determine and clarify its applicability.

(V) Admitting over defendants' objections evidence and records of civil litigation between them and strangers to this suit, is reversible error.

The statement of this proposition hardly needs authority to support it as a clear elementary principle of law. Its effect was prejudicial. Exception was duly taken (R. 45) on the ground that such evidence was irrelevant and immaterial. In the case of the *United States* v. *Satuloff Bros.*, 79 F. (2d) 846, the exact question arose. The Circuit Court of Appeals for the Second Circuit, held:

> "Judgments and decrees rendered in civil suits are inadmissible in evidence in criminal prosecutions as proofs of any facts determined by said judgments or decrees, and the reason for the rule as stated has been that the parties are different and that the quantum of proof required in one case, is different from that required in another."

By sustaining the admission of such evidence and records of such civil litigation in the instant case the Circuit Court of Appeals for the Seventh Circuit established a rule of law in direct conflict with that announced by the Circuit Court of Appeals for the Second Circuit in the case above cited. We respectfully submit to this Honorable Court that the ruling in the *Satuloff* case is the correct way and should be so enunciated by this Court.

(VI) No conviction can be sustained on any count of this indictment in the absence of proof that any of the distilled spirits seen or seized in the instant case were not tax paid.

The evidence in this case proceeded throughout the trial exactly as in cases under the old Prohibition Laws. The mere mention of the words "alcohol," "liquor," "distilled spirits," etc., etc., apparently carried the presumption of illegality. But throughout the entire trial there is not a

scintilla of evidence that any of the distilled spirits in the instant case were not tax paid. Proof could very easily have been made by the Government by a mere showing that the containers, most of which were large drums, did not bear upon them stamps evidencing tax payments. No such evidence nor any other kind was offered by the Government. By sustaining the conviction in this case the Circuit Court of Appeals for the Seventh Circuit comes into direct conflict with the Circuit Court of Appeals for the Eighth Circuit, which said in *Mickle* vs. *United States*, 33 F. (2d) 684, 685—

> "Of the crime charged in the first count of this indictment there are three elements: First, the spirits removed must have been spirits on which the tax has not been paid; second, removal must have been from a distillery; third, removal must have been to a place other than a bonded warehouse provided by law. Of the crime charged in the second count of the indictment also there are three elements: First, the spirits concealed must have been spirits on which the tax was not paid. Second, they must have been concealed by the defendant; third, they must have been spirits which had been removed from a distillery. Of the several elements of the two crimes charged, all of which must be proved before the crimes are proved, the fact that the tax on the spirits involved had not been paid may be said to be the most essential element. Certainly it is a necessary element, and certainly the crimes charged are not proved unless it is proved that on the spirits involved the tax had not been paid."

and again in the same case on the same page the court goes on to say:

> "Prior to national prohibition it was entirely lawful to have in one's possession and to transport distilled spirits of less than five gallons in a container bearing no stamps. No provision of the Law required stamps

to be affixed to containers of less than five gallons of distilled spirits. See Sections 266, 332, 335, Title 26, U. S. Code (26 U. S. C. A., 266, 332, 335)."

(VII) Refusal by the Court to instruct on the effect of abandonment of a conspiracy by a conspirator, in clear and unequivocal language, is prejudicial error.

The Circuit Court of Appeals in its opinion in this case on that point said (R. 158):

> "Appellants complain also because the Court refused to give in the specific language requested, a charge to the effect that if any defendant abandoned the conspiracy more than three years prior to the return of the indictment, he should be found not guilty. The Court advised the jury that the conspiracy must have been in existence within three years prior to May, 1934, and that a defendant, to be guilty, must have been engaged in the conspiracy within that period before there could be any conviction. He told the jury explicitly that proof that any particular defendant consciously, understandingly and with knowledge participated in an act to be accomplished by the conspiracy, and did so with the consciousness that he was participating in the furtherance of the common design, was essential to a conviction. The inevitable meaning of his charge upon this subject matter was that, before a defendant could be convicted, the proof must show that he was consciously engaged in the conspiracy charged within three years prior to the return of the indictment."

We respectfully submit to this Court that such is *not* the inevitable meaning of the charge upon the subject matter. The recondite and abstruse flow of legal verbiage from the lips of the trial judge might conceivably lead a learned Court of Appeals to infer such meaning from the charge. It might also lead an equally learned Court to the

inference that this is a charge upon participation in—rather than the abandonment of—a conspiracy. It is most emphatically not an understandable instruction of law to an ordinarily intelligent jury for their adequate guidance in the determination of the question of fact. We direct the attention of this Court towards the *Collenger* case, 50 F. (2d) 34, where the same Circuit Court said:

> "The charge given is the statement of a mere abstract principle of law which the jury was quite unqualified to apply to the many defendants and to the many instances of the reception of such evidence in the course of this lengthy trial."

Conclusion.

It is submitted that for the reasons stated the Writ of Certiorari should be granted.

Respectfully submitted,

HARRY C. HEYL,
IRWIN S. RUBELLE,
Attorneys for Hyman Wainer,
Louis Wainer, George Davis,
Donald Blink, Ed. Lueck.

APPENDIX.

Sec. 88, Title 18, U. S. C. A.

1. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both.

Sec. 193, Title 26, U. S. C. A.

2. Any person who shall carry on the business of a rectifier wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquor, retail dealer in malt liquor, or manufacturer of stills without having paid the special tax as required by law shall for every such offense be fined not less than $100 nor more than $5,000 and imprisoned not less than 30 days nor more than 2 years. And all distilled spirits or wines, and all stills or other apparatus, fit or intending to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found and all distilled spirits or wines and personal property found in the rectifying establishment or in any building, room, yard, enclosures connected therewith, and used with or constituting a part of the premises shall be forfeited to the United States.

3. Sec. 404, Title 26, U. S. C. A.

Removal or Concealment of Spirits Contrary to Law.—Whenever any person removes, or aids or abets in the removal of any distilled spirits on which the tax has not been paid, to a place other than the bonded warehouse provided by law, or conceals or aids in the concealment of any spirits so removed, or removes, or aids or abets in the removal of any distilled spirits from any distillery warehouse, or other warehouse for distilled spirits authorized by law, in any manner other than is provided by law, or conceals or aids

in the concealment of any spirits so removed he shall be liable to a penalty of double the tax imposed on such distilled spirits so removed or concealed, and shall be fined not less than $200 nor more than $5,000, and imprisoned not less than three months nor more than three years.

4. Sec. 3, Title 27, U. S. C. A.

All laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force on October 28, 1919, shall be and continue in force, as to both beverage and non-beverage liquor, except such provisions of such laws as are directly in conflict with any provision of this title; but if any act is a violation of any of such laws and also of this title, a conviction for such act or offense under one shall be a bar to prosecution therefor under the other.